

1 denied admission, excluded, deported, and removed from the United States, and not having
2 obtained the express consent of the Attorney General or the Secretary of the Department of
3 Homeland Security to reapply for admission to the United States, in violation of 8 U.S.C.
4 § 1326, enhanced by 8 U.S.C. § 1326(b)(2).

5 Pursuant to the plea agreement, Petitioner waived “any and all motions, defenses,
6 probable cause determinations, and objections which [he] could assert to the information or
7 indictment or to the Court’s entry of judgment against [him] and imposition of sentence upon
8 [him] providing the sentence is consistent with [the plea] agreement.” In addition, Petitioner
9 waived “any right to collaterally attack [his] conviction and sentence under Title 28, United
10 States Code, Section 2255, or any other collateral attack.”

11 The plea agreement provided for a sentencing range of 30-78 months, depending on
12 Petitioner’s criminal history, for a Level 24 Offense. The Court imposed a sentence of fifty-
13 seven months, the lowest possible sentence under the plea agreement for Petitioner’s
14 Criminal History Category V.

15 Discussion

16 In his motion, Petitioner seeks a reduction of his sentence to thirty-seven months. He
17 contends “I signed an agreement from 30-37 months and I received 57 months. I feel the
18 Gov. didn’t meet their end of the bargain.”

19 First, Petitioner’s claim for a sentence reduction is waived because, in the plea
20 agreement, Petitioner waived “any right to collaterally attack [his] conviction and sentence
21 under Title 28, United States Code, Section 2255.”

22 Second, Petitioner’s claim lacks merit. He signed a plea agreement that provided for
23 a sentencing range of 30-37 months *if* he had a Criminal History Category **I**. He did not.
24 He had a Criminal History Category **V** because he had three felony convictions, committed
25 the current offense while under a criminal justice sentence, and committed the current
26 offense less than two years following his release from imprisonment. The range under the
27 plea agreement for a Criminal History Category V was 57-71 months. Petitioner received
28 57 months. The government did not fail to “meet their end of the bargain.”


Conclusion

Accordingly,

IT IS ORDERED that Petitioner's § 2255 Motion (U.S.D.C. document #20 in CR-04-1803-TUC-FRZ) is **DENIED** and this case (CV-06-47-TUC-FRZ) is **DISMISSED**.

IT IS FURTHER ORDERED that the Clerk of the Court **SHALL SERVE** a copy of the Motion and this Order on Respondent and **SHALL SERVE** a copy of this Order on Petitioner.

DATED this 21st day of February, 2006.


FRANK R. ZAPATA
United States District Judge